

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY DRIVER, JR.,

Plaintiff,

v.

KIMBERLY J. MUELLER, et al.,

Defendants.

No. 2:23-cv-1233 DAD KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983. Plaintiff's motion for preliminary injunction and temporary restraining order is before the court. It is recommended that the motion be denied.

Background

On July 28, 2023, the undersigned recommended that plaintiff be required to pay the court's filing fee in full to proceed with this action because plaintiff has accrued three strikes under 28 U.S.C. § 1915(g). (ECF No. 10.)

Plaintiff's Complaint

Plaintiff claims that defendants Mueller and Drozd, both U.S. District Court Judges, deprived plaintiff of his access to the court based on their rulings in prior cases.¹ Also, on June

¹ Plaintiff does not provide a case number for the case he claims Judge Mueller issued an order on June 21, 2023. (ECF No. 1 at 3.)

1 17, 2023, plaintiff told social worker Barnes that the Sgt. in ICF/PIP psychiatric was not allowing
 2 plaintiff to make copies or attend the law library to make copies. As injury, plaintiff sets forth
 3 various medical conditions, states he has suffered scrapes and bruises, grievances are thrown in
 4 the trash, and alleges 100 of his lawsuits were wrongfully dismissed.

5 As relief, plaintiff requests that: (1) the court reinstate his civil actions 2:23-cv-0393
 6 DAD AC, and 23-cv-0209 DAD JDP; (2) assign Chief Judge Mueller to all of plaintiff's cases
 7 currently pending in the Eastern District; and (3) the court investigate this case.

8 Governing Law

9 A temporary restraining order preserves the status quo before a preliminary injunction
 10 hearing may be held; its provisional remedial nature is designed only to prevent irreparable loss
 11 of rights prior to judgment. Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto
 12 Truck Drivers, 415 U.S. 423, 439 (1974). The standards for both forms of relief are essentially
 13 the same. See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir.
 14 2001) ("Because our analysis is substantially identical for the injunction and the TRO [temporary
 15 restraining order], we do not address the TRO separately.").

16 "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter
 17 v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008) (citations omitted); Epona v.
 18 Cty. of Ventura, 876 F.3d 1214, 1227 (9th Cir. 2017). "The sole purpose of a preliminary
 19 injunction is to 'preserve the status quo ante litem pending a determination of the action on the
 20 merits.'" Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009) (citing L.A.
 21 Memorial Coliseum Comm'n v. NFL, 634 F.2d 1197, 1200 (9th Cir. 1980).) The party seeking a
 22 preliminary injunction must establish that "he is likely to succeed on the merits, that he is likely
 23 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
 24 his favor, and that an injunction is in the public interest." Winter, 555 U.S. at 20 (citations
 25 omitted); Am. Trucking Associations, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.
 26 2009); Fed. R. Civ. P. 65 (governing both temporary restraining orders and preliminary
 27 injunctions).

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1 The propriety of a request for injunctive relief hinges on a significant threat of irreparable
2 injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668,
3 674 (9th Cir. 1988); see also Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32
4 (9th Cir. 2011). Speculative injury does not constitute irreparable harm. See id.; Goldie's
5 Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984). A presently existing actual
6 threat must be shown, although the injury need not be certain to occur. Zenith Radio Corp., 395
7 U.S. at 130-31; FDIC v. Garner, 125 F.3d 1272, 1279-80 (9th Cir. 1997), cert. denied, 523 U.S.
8 1020 (1998).

9 There is a heightened burden where a plaintiff seeks a mandatory preliminary injunction,
10 which should not be granted “unless the facts and law clearly favor the plaintiff.” Comm. of
11 Cent. Am. Refugees v. I.N.S., 795 F.2d 1434, 1441 (9th Cir. 1986) (citation omitted).

12 Further, in cases brought by prisoners involving conditions of confinement, any
13 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the
14 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
15 correct the harm.” 18 U.S.C. § 3626(a)(2).

16 Finally, an injunction against individuals who are not parties to the action is strongly
17 disfavored. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969) (“It is
18 elementary that one is not bound by a judgment . . . resulting from litigation in which he is not
19 designated as a party. . . .”).

20 Plaintiff’s Motion

21 Plaintiff seeks injunctive relief based on five years of allegedly unlawful forced anti-
22 psychotic medication which he contends causes him chest pain and heart disease. Plaintiff seeks
23 a court order to stop the forced medication.

24 Discussion

25 Plaintiff’s motion should be denied because it seeks relief that is unrelated to the claims
26 proceeding in this case, and challenges actions taken by unidentified individuals who are not
27 party to this action and that are taking place in the Correctional Training Facility in Soledad,
28 California.

1 As the Ninth Circuit stated,

2 [T]here must be a relationship between the injury claimed in the
3 motion for injunctive relief and the conduct asserted in the
4 underlying complaint. This requires a sufficient nexus between the
5 claims raised in a motion for injunctive relief and the claims set forth
6 in the underlying complaint itself. The relationship between the
7 preliminary injunction and the underlying complaint is sufficiently
strong where the preliminary injunction would grant “relief of the
same character as that which may be granted finally.” De Beers
Consol. Mines, 325 U.S. at 220. Absent that relationship or nexus,
the district court lacks authority to grant the relief requested.

8 Pacific Radiation Oncology, LLC v. Queen’s Medical Center, 810 F.3d 631, 636 (9th Cir. 2015).

9 Here, plaintiff is housed at the Correctional Training Facility in Soledad, California, and
10 challenges forced medication of anti-psychotic drugs. In the instant action, plaintiff seeks
11 reinstatement of other civil actions and an investigation concerning his inability to access the law
12 library and file administrative grievances. In his pending motion, plaintiff seeks an order
13 stopping the forced medication of anti-psychotic drugs. Because plaintiff identified no
14 relationship between his underlying allegations and the instant motion, the motion should be
15 denied.

16 In addition, plaintiff’s motion should be denied because it is directed to unidentified
17 individuals over whom the court does not have jurisdiction. Zenith Radio Corp., 395 U.S. at 110.

18 Importantly, in order to obtain injunctive relief, plaintiff is required to address each
19 element under Winter. Plaintiff provides no facts demonstrating he is likely to succeed on the
20 merits of this action, that the balance of equities tips in his favor, or that an injunction is in the
21 public interest. Because plaintiff fails to address all of the elements under Winter, his motion
22 should also be denied.

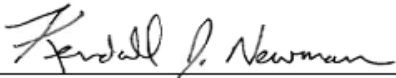
23 For all the above reasons, plaintiff’s motion should be denied.

24 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for injunctive
25 relief (ECF No. 11) be denied.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
3 objections shall be filed and served within fourteen days after service of the objections. The
4 parties are advised that failure to file objections within the specified time may waive the right to
5 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: August 7, 2023

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8 KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE

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